

**INTERGOVERNMENTAL LAKE MICHIGAN WATER
SERVICE IMPLEMENTING AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT made and entered into this _____ day of _____, 2002, by and between the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation, located in DuPage Counties, Illinois (hereinafter referred to as "DOWNERS GROVE"), the COUNTY OF DUPAGE, a unit of local government created and existing under the laws of the State of Illinois (the "COUNTY"), and the DUPAGE WATER COMMISSION (hereinafter referred to as the "COMMISSION"), a unit of government located in the counties of DuPage, Will and Cook, Illinois. DOWNERS GROVE, the COUNTY and the COMMISSION are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the COMMISSION is a public corporation created under the Water Commission Act of 1985, as amended, 70 ILCS 3720/1 et. seq, and Division 11 of the Illinois Municipal Code, and is authorized to enter into contracts and agreements relating to the purchase and supply of water pursuant to the laws of the state of Illinois; and

WHEREAS, the COMMISSION's provision of Lake Michigan water to its "Charter Customers" and new customers is governed by various laws and agreements, including agreements by and between the COMMISSION and its customers; and

WHEREAS, DOWNERS GROVE is an Illinois home rule municipal corporation organized and existing pursuant to the laws of the State of Illinois; and

WHEREAS, DOWNERS GROVE has in existence a municipal water system including pipes and facilities for the distribution and provision of Lake Michigan water to properties both within and without the corporate limits of the Village of Downers Grove; and

WHEREAS, DOWNERS GROVE is an "included unit" under Section 2 of the Water COMMISSION Act of 1985, and is a Charter Customer of the COMMISSION entitled to purchase Lake Michigan water sufficient to meet its needs; and

WHEREAS, the COUNTY is a unit of local government organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, subject to certain limitations, the COMMISSION and DOWNERS GROVE are authorized by law to engage in the retail sale of water to areas of DuPage County affected by contaminated well water; and

WHEREAS, certain areas of DuPage COUNTY have been affected by contaminated well water, which poses a significant threat to the health and safety of the inhabitants of certain areas located in DuPage County; and

WHEREAS, on _____, 2002, the Parties entered into an



"INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION FOR LAKE MICHIGAN WATER TO AREAS OF DUPAGE COUNTY AFFECTED BY CONTAMINATION" attached hereto as Exhibit "A" (hereinafter, the "Enabling Agreement"), whereby the COMMISSION, the COUNTY, and the COMMISSION's Charter Customers, including DOWNERS GROVE, agreed to terms for the provision of Lake Michigan water to areas affected by well contamination, said areas being identified as "Service Areas"; and

WHEREAS, under the Enabling Agreement, the Parties agreed, among other things, that implementing agreements would be entered into between the COMMISSION, the COUNTY, and certain Charter Customers, setting forth both the specific terms and conditions for the extension of existing mains or the construction of new mains and the provision of water service to the identified Service Areas if not prohibited by law or an existing agreement; and

WHEREAS, one of the Service Areas includes territory to which DOWNERS GROVE is the closest adjacent Charter Customer, such territory being described on Exhibit "B" hereto (hereinafter, the "Affected Area"); and

WHEREAS, portions of the Affected Area are incorporated within the Village of Downer Grove and portions are located in unincorporated DuPage County; and

WHEREAS, DOWNERS GROVE's municipal water mains are presently extended to service the Affected Area located south of Maple Avenue, but are not laterally extended to most of the property lines or connected to the residences on those properties within the Affected Area; and

WHEREAS, DOWNERS GROVE's municipal water mains are not presently extended to service the Affected Area located north of Maple Avenue and, as such new mains need to be constructed and extended to provide service to those properties within the Affected Area; and

WHEREAS, DOWNERS GROVE is not prohibited by law and has not entered into any intergovernmental agreements or boundary agreements that would prohibit DOWNERS GROVE from extending its municipal water system to the Affected Area, providing water service to the properties within the Affected Area, or otherwise performing its duties and obligations under the Enabling Agreement and this Implementing Agreement; and

WHEREAS, the COMMISSION and DOWNERS GROVE have jointly assessed the DOWNERS GROVE municipal water system in terms of the extensions of existing mains and the construction of new mains that would be required in order to extend water service to the Affected Properties, and have determined 1) the Service Costs for the extension of water service to the Affected Area, and 2) the base number of Customers purchasing Lake Michigan Water pursuant to this Agreement for purposes of determining Service rates; and

WHEREAS, DOWNERS GROVE and the COUNTY have conferred and determined not to implement any special service areas for the purpose of financing the extension of Lake Michigan water service to the Affected Area, and the Affected Area is not designated in whole or in part as a Secondary Service Area through which service can only be provided through a new main; and

WHEREAS, the Parties, within their sole and absolute discretion, have determined to enter

into this Lake Michigan Water Service Implementing Agreement ("Agreement") in order to implement the terms of the Enabling Agreement as to the Affected Area, to establish a map of the Affected Area as the definitive source regarding the boundaries of the Service Area, to create a method for extending the DOWNERS GROVE water system to the Affected Area, to finance the DOWNERS GROVE water system extension to the properties within the Affected Area without the creation of a special service area, and to provide an adequate supply of Lake Michigan water to the Affected Area, all consistent with the terms and provisions of the Enabling Agreement; and

WHEREAS, Article 7, Section 10 of the Constitution of the State of Illinois (1970) authorizes units of local government, including municipalities, to contract and otherwise associate with individuals, associations and corporations to exercise, combine or transfer any power or function not prohibited to them by law or ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 (2001), as amended, authorizes units of local government in Illinois to exercise jointly with any public agency of the State, including other units of local government, any power, privilege or authority which may be exercised by a unit of local government individually and to enter into contracts for the performance of governmental services, activities and undertakings; and

WHEREAS, 65 ILCS 5/11-124-1 (2001), as amended in part authorizes municipalities to contract for the purpose of acquiring and assuring an adequate supply of water.

NOW THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

INCORPORATION BY REFERENCE

1.1 The statements, representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.1. The Exhibits referred to in this Agreement and attached to or incorporated into it by textual reference are incorporated by reference into and made a part of this Agreement as though they were fully set forth in this Section 1.1. The Parties acknowledge the accuracy and validity of those Exhibits.

ARTICLE II

CONSTRUCTION OF AGREEMENT

2.1 For purposes of this Agreement, the words and phrases used in this Agreement shall, unless otherwise expressly defined herein, have the same meaning as defined in the Enabling Agreement.

2.2 Any terms which are not defined in this Agreement or the Enabling Agreement shall, have the same meaning as defined in the Water Commission Act of 1985, as

amended, or Division 11 of the Illinois Municipal Code.

2.3 Any terms which are not defined as stated in this Agreement, the Enabling Agreement, the Water Commission Act of 1985, as amended, or Division 11 of the Illinois Municipal Code shall be construed as having the commonly accepted meaning as defined in a standard dictionary.

ARTICLE III

PLANNING

3.1 Determination of Service Area. The COMMISSION has determined that the properties within the Affected Area comprise or are within a Service Area, that DOWNERS GROVE is the closest adjacent Charter Customer to such area, and that the Affected Area (being described on Exhibit "B" hereto) is a "Primary Service Area.

3.2 Design. DOWNERS GROVE will be the responsible party for the design of the construction and extension of its water facilities and service lines within the rights of way. DOWNERS GROVE shall cooperate with the COMMISSION as reasonably necessary for the COMMISSION to finally determine and approve the Service Costs as to the Affected Area.

3.3 Construction Schedule. Subject to the rights of the COUNTY under Section 6.4 of the Enabling Agreement, DOWNERS GROVE shall provide a schedule to the COUNTY of DuPage that shall include necessary engineering and construction considerations, including projected completion dates, related to construction and installation of the New Main. If the New Main is constructed by the COUNTY, then, upon completion of the New Main, the COUNTY of DuPage shall dedicate the New Main to DOWNERS GROVE.

3.4 Construction Contracting. DOWNERS GROVE shall be the contracting party for all new mains and service line extensions to the property line (B-box), and the Customers shall be the contracting parties for all service line extensions from their property line (B-box) to and within the house; provided however, all DOWNERS GROVE contracts shall be contingent upon approval by the COMMISSION. DOWNERS GROVE shall solicit bids for the construction of the improvements in accordance with applicable law, using

DOWNERS GROVE' s standard bidding and construction contract documents, if any. The Parties shall each be beneficiaries of all insurance, bonds, warranties and guarantees under the DOWNERS GROVE construction documents. DOWNERS GROVE shall keep the COUNTY and the COMMISSION advised regarding the progress of the work, and all change orders.

3.5 Cooperation Concerning Property Acquisition. The COMMISSION and DOWNERS GROVE shall cooperate each other and with the COUNTY of DuPage as necessary in acquiring property rights necessary to provide service under the terms of this Agreement.

3.6 Notice to Potential Customers from Affected Area. Within thirty (30) days of the Effective Date of this Agreement, the COUNTY shall give notice of estimated Service Costs and Service Rates to Potential Customers from the within the Affected Area. Potential Customers offered Lake Michigan water shall decide, in accordance with Section 6.5 of the Enabling Agreement, whether they wish to receive water service from DOWNERS GROVE. Service Cost information shall be determined as described in Sections 5.2 and 5.3 of the Enabling Agreement.

3.7 Cooperation Concerning Customers. The Parties agree to cooperate with one another as necessary to maximize the number of Customers from the Affected Area who receive Lake Michigan water, as provided in Sections 6.6 of the Enabling Agreement.

3.8 Limitations on Conditions and on Annexation. DOWNERS GROVE may require that each Customer enter into a pre-annexation agreement in the form attached hereto as Exhibit "E" or, where annexation is not a condition of service, a water service or water loan agreement, as a pre-condition of receiving Lake Michigan water under the terms of this Agreement. No such agreement shall require annexation earlier than ten years from the end of the respective initial consideration periods described in Section 3.6. In the case of a pre-annexation agreement, during the period before annexation, DOWNERS GROVE shall not impose any conditions on the provision of Lake Michigan water to a Customer, except those set forth in the pre-annexation agreement and allowed by generally applicable laws, ordinances, rules, and regulations related to the receipt and use of Lake Michigan water (such as sprinkling limitations and sanitary plumbing requirements). Except as provided herein, DOWNERS GROVE does not waive any annexation rights to which it may be entitled under State law or under any pre-existing annexation or pre-annexation agreement(s).

ARTICLE IV

EXTENSION OF FACILITIES; COST

4.1 Extension of DOWNERS GROVE Water System.

4.1.1 Service from an Existing Main. If Existing Mains can be used to provide service to the Affected Area, DOWNERS GROVE shall 1) within ninety (90) days after the Customer timely decides to receive water service from DOWNERS GROVE, enter into any necessary annexation, pre-annexation, or water service agreements with those Customers; and 2) within one hundred twenty (120) days after the Customer timely decides to receive water service from DOWNERS GROVE, extend and offer service through the Existing Mains to the Affected property lines (B-boxes) of those Customers.

4.1.2 Construction of a New Main and Extension of Service. Upon the execution of any necessary loan documents between the COMMISSION and DOWNERS GROVE, but not before 1) I.E.P.A. approval of a grant for up to seventy percent (70%) of the total cost of the construction of water main infrastructure, and 2) at least one hundred (100) Customers have entered into the necessary annexation or pre-annexation agreements, and/or loan documents for the receipt of Lake Michigan Water service from DOWNERS GROVE, DOWNERS GROVE shall proceed to construct and extend a New Main to the Affected Area located north of Maple Avenue. DOWNERS GROVE shall complete said construction within one hundred eighty (180) days after the Illinois Environmental Protection Agency's (I.E.P.A.) approval of the grant, or the execution of the 100th agreement providing for water service by DOWNERS GROVE within the Affected Area, which ever is later. Thereafter, within thirty (30) days after each Customer has entered into the necessary agreement providing for water service by DOWNERS GROVE within the Affected Area, DOWNERS GROVE shall extend and offer service to the Customers' Affected property lines (B-boxes).

4.2 Determination of Service Costs to Affected Area.

4.2.1 All properties within the Affected Area are residential properties, and therefore all Service Costs are residential Service Costs. Those components of "Service Costs," as that term is defined in Section 5.2 and 5.3 of the Enabling Agreement, to the Affected Area, have been determined by the Parties to be as follows:

- a. DOWNERS GROVE Connection Fee: \$970.00 per residential connection. This number shall be the residential connection fee uniformly applied throughout DOWNERS GROVE, and shall be subject to change from time to time by DOWNERS GROVE.
- b. New Water Main Extension Cost: The New Water Main Extension Cost shall be the actual amount paid by DOWNERS GROVE (after State of Illinois grant(s)) pursuant to bid award, for construction of New Mains to the

portion of the Affected Area located north of Maple Avenue. This cost is estimated to be \$350,000.00, and this number shall be used to determine the Service Costs and Service Rates presented to Potential Customers under Section 3.6.

c. DOWNERS GROVE Recapture Amount: \$2,250,000.00

d. Cost of Lateral Extensions to the Properties: This Service Cost shall be the actual, total amount paid by DOWNERS GROVE, pursuant to bid award, for extending service lines from the water main(s) to the property lines and B-Boxes for all properties within the Affected Area. Extensions to all properties within the Affected Area located north of Maple Avenue shall be made at the time of construction of the New Mains. Extensions to those properties within the Affected Area located south of Maple Avenue shall be made in accordance with Sub-Section 4.1.1. This total cost is estimated to be \$1,125,000.00 (based on 802 Customers and a \$1,500.00 average cost per property), and this number shall be used to determine the Service Costs and Service Rates presented to Potential Customers under Section 3.6.

e. Cost of Lateral Service Extensions to the Houses: This Service Cost is a temporary, partial reimbursement to the Customer for the cost of extending service lines from the property lines and B-Boxes to the houses (including the costs of disconnecting and capping individual wells). The temporary, partial reimbursement amount shall be \$3,000 per property within the Affected Area, regardless of the actual cost of each extension. The total cost of these extensions is estimated to be \$2,406,000.00 (based on 802 Customers and a \$3,000.00 average cost per property), and this number shall be used to determine the Service Costs and Service Rates presented to Potential Customers under Section 3.6. Customers will contract directly for the lateral extension to the house work, either with a contractor under a price per job bid awarded by the COUNTY, or with another contractor of the Customers' choosing. The funds provided by DOWNERS GROVE are solely a temporary, partial advance to the Customers, subject to full repayment by the Customers, and are not "public funds" under the Mechanics Lien Act, 770 ILCS 60/1 et seq..

f. Service Provision Costs and Professional Fees. \$100,000.00. This cost shall include Service Provision Costs, such as design, engineering, surveying, construction administration and recording, and Professional Fees, including legal, public relations and construction testing costs, as set forth in Sections 5.2 and 5.3 of the Enabling Agreement. Service Costs shall include a contingency of an amount not to exceed \$700,000.00. The contingency amount shall be available to cover costs relating to unforeseen soil conditions, land acquisition, and other costs as agreed upon by the Parties.

4.2.2 Customers. The Parties have determined that the base number of Customers to be used in calculating the Service Rates is 802. This number is

comprised of 52 Customers north of Maple Avenue and 750 Customers south of Maple Avenue. These numbers are subject to change by letter of agreement between the Parties, based on current actual Customer numbers.

ARTICLE FIVE

FINANCING

5.1 Loan from COMMISSION to DOWNERS GROVE. The COMMISSION shall provide a twenty (20) year, unsecured loan to DOWNERS GROVE at a rate of two percent (2%) per annum on any unpaid principle amount, for the costs of extending DOWNERS GROVE' s municipal water system to the properties within the Affected Area. The COMMISSION will provide funds to DOWNERS GROVE either through the COMMISSION's cash on hand or via the COMMISSION' s issuance of revenue bonds, in the form of an unsecured line of credit. Interest payments will be due annually during the period of the loan, beginning in year one, and principal payments in equal installments will be due annually until paid in full, beginning on the date six years after the loan is made.

5.2 Payments by DOWNERS GROVE. DOWNERS GROVE will be required to pay the COMMISSION annually at least the following amount: the total amount of accrued unpaid interest, plus any outstanding principal due that year divided by the number of years remaining on the 20 year loan. $(\text{total accrued unpaid interest}) \div (\text{any outstanding principal due that year} / \text{number of years remaining on the 20 year loan})$ Downers Grove may from time to time prepay the amount outstanding or due, in whole or in part, without premium or penalty. All payments shall be made in immediately available funds. If any debt remains after the twenty (20) year loan period concludes, the COMMISSION shall extend the term of the loan for a commercially reasonable period, provided DOWNERS GROVE is not in default. Prior to the disbursement of any loan proceeds, DOWNERS GROVE shall execute a promissory note as evidence of the debt, and such other documents as may reasonably be necessary for the COMMISSION to issue the loan.

5.3 Line of Credit. The loan from the COMMISSION shall be available to DOWNERS GROVE in the form of a line of credit not to exceed ten million (\$10,000,000.00) dollars. All requests for funds drawn against the established line of credit shall be submitted as follows:

5.3.1. Before any draw on the line of credit will be permitted, and at its sole cost and expense, DOWNERS GROVE shall require each of its contractors to submit:

- a. A Contractor' s Sworn Statement, naming each of the subcontractors or

suppliers of material. Copies of such Sworn Statements shall be provided to the COMMISSION; and

- b. A Performance Bond and a Labor and Material Payment Bond equal to 110% of the contract amount, each for the Parties' benefit to remain in effect until all work has been completed and a two year Maintenance Bond is posted.

5.3.2. DOWNERS GROVE shall submit any request to draw on the line of credit in the form of the Reduction Letter, attached hereto and incorporated herein as Exhibit " D. "

5.3.3. Each such Reduction Letter shall have attached thereto:

- a. The Architect's or Project Engineer's certification of the total cost of completed work, as approved by an authorized representative of DOWNERS GROVE ;
- b. The contractor's sworn statement specifying all amounts paid to or to become due to all subcontractors and material suppliers; and
- c. Interim or final waivers of lien from each contractor, subcontractor, and material supplier.

5.3.4. Before DOWNERS GROVE makes a final payment to its contractor, it shall require that the contractor shall post a two year maintenance bond for the benefit of the Parties in a form approved by the COMMISSION.

5.3.5 DOWNERS GROVE hereby grants to the commission a Secured Interest in any real or personal property owned by DOWNERS GROVE until such time as the loan has been paid in full, and agrees to execute any documents necessary to enable the COMMISSION to perfect said security interests.

5.4 Downers Grove Default And COMMISSION Remedies. DOWNERS GROVE shall be in default under the terms of this Agreement if any amount payable under the terms of this Agreement is not paid when due. If DOWNERS GROVE is in default under the terms of this Agreement, all funds drawn and outstanding on the line of credit shall become immediately due and payable, and the COMMISSION shall have the right, in its sole discretion, and without further notice, to terminate the line of credit. Furthermore, if DOWNERS GROVE is in default under the terms of this Agreement, the COMMISSION shall have the first right to any payments due from Customers under any loans extended by Downers Grove to Customers under Section 5.5 of this Agreement. Such funds shall be applied first to the repayment of any costs incurred by the COMMISSION in collecting any amounts due from Downers Grove, then to unpaid interest, then to unpaid principle.

5.5 Loans from DOWNERS GROVE to Customers.

5.5.1. DOWNERS GROVE shall offer twenty (20) year, unsecured loans to residential Customers at the rate of two percent (2%) per annum for each residential Customer's proportionate share of the Service Costs (including the \$3,000.00 temporary partial reimbursement for the Customer's Cost of Lateral Service Extension to the House), as determined in accordance with Section 4.2. Interest payments will be due annually during the period of the loan, beginning in year one, and principal payments in equal installments will be due annually until paid in full, beginning on the date six years after the loan is made. If the proportionate share of each Customer within the Affected Area is adjusted pursuant to Section 4.2, then the loan amounts and repayment amounts will be recalculated by DOWNERS GROVE accordingly.

5.5.2. DOWNERS GROVE shall extend the loans under the twenty (20) year loan term to Customers who enter into loan agreements with DOWNERS GROVE when loans are initially offered within the Affected Area. For those Customers who enter into loan agreements after loans were initially offered within the Affected Area, DOWNERS GROVE shall be required to only extend for such term of years as may remain for the loans issued to Customers when loans were initially offered. Furthermore, Customers who enter into loan agreements after loans were initially offered within the Affected Area shall be responsible for principal and interest payments as if they entered into a loan agreement when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall pay interest in years 1 through the term of the loan, and principal in years 6 through the term of the loan; if the loan is taken in year 8, the Customer shall be responsible for paying interest for years 1-7, and principal for years 6 and 7, amortized over the remaining term of the loan, and commence making annual principal and interest payments for years 8 through 20.

5.5.3. Prior to the disbursement of any loan proceeds, each Customer shall execute a promissory note or other evidence of the debt, and such other documents as may reasonably be necessary for the DOWNERS GROVE to issue the loan. The form of the loan agreement offered by DOWNERS GROVE to a Customer shall be subject to review by the COMMISSION prior to its use. An estimate of the monthly cost to Customers within the Affected Area, based on the year the loan is taken by the Customer, is attached hereto as Exhibit "E."

5.6 Grants to Customers. DOWNERS GROVE shall cooperate with the COUNTY in order to obtain and distribute grants to assist Customers who satisfy applicable grant criteria.

**ARTICLE SIX
SERVICE RATES**

6.1 DOWNERS GROVE's Charges to Customers. DOWNERS GROVE will charge each Customer within the Affected Area no more than the following amount: the total amount of Service Costs for the Affected Area divided by nine-tenths (9/10) of the number of Potential Customers within the Affected Area (unless more than nine-tenths (9/10) of the number of Potential Customers within the Affected Area are Customers, in which case DOWNERS GROVE may charge each Customer no more than each Customer's proportionate share of Service Costs based on the actual number of Potential Customers within the Affected Area). As provided in Sub-Section 4.2.2, the parties have presently determined that nine-tenths (9/10) of the number of Potential Customers within the Affected Area (the "Base number") is 802. If at any time the number of Potential Customers within the Affected Area increases, then the proportionate share of each Customer within the Affected Area shall be adjusted accordingly, effective the second following billing cycle to the Customers. DOWNERS GROVE may, with COMMISSION approval, adjust the charges for each Customer based on factors such as the water consumption of each Customer and whether the Customer is a residential or commercial or industrial Customer.

6.2 Ability to Charge Differential Rate. DOWNERS GROVE may provide Lake Michigan water to Customers in the Affected Area at a differential rate than to DOWNERS GROVE's own municipal customers so long as the rate is not unreasonably discriminatory under Illinois law.

6.3 Right to Discontinue Service. To the extent authorized by law, DOWNERS GROVE shall have the right to discontinue service to any Customer of the Affected Properties who receives Lake Michigan water from DOWNERS GROVE if the Customer:

6.3.1 fails to pay appropriate costs related to the costs of receiving service, including the Customer's share of Service Costs; or

6.3.2. breaches a pre-annexation agreement with DOWNERS GROVE.

Furthermore, to the extent authorized by law, a lien will attach to the property of the Customer in the amount that the Customer is in default to DOWNERS GROVE.

ARTICLE SEVEN

DEFAULTS AND REMEDIES

7.1 The occurrence of the following shall constitute a default by the COMMISSION under this Agreement: failure by, the COMMISSION to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the COMMISSION's receipt of written notice thereof from either the COUNTY of DuPage or DOWNERS GROVE; provided, however, if such matter cannot with due diligence be remedied by the COMMISSION within such thirty (30) day period, and the COMMISSION shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the COMMISSION to cure or correct such matter.

7.2 If the COMMISSION defaults under this Agreement, the DOWNERS GROVE's remedies shall be limited to an action in equity against the COMMISSION to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the COMMISSION's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but the other party to this Agreement agrees that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the COMMISSION.

7.3. DOWNERS GROVE's Default and COMMISSION Remedies.

7.3.1 The occurrence of any or more of the following matters shall constitute a default by DOWNERS GROVE under this Agreement: failure by DOWNERS GROVE to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after DOWNERS GROVE's receipt of written notice thereof from the COMMISSION; provided, however, if such matter cannot with due diligence be remedied by DOWNERS GROVE within such thirty (30) day period, and DOWNERS GROVE shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by DOWNERS GROVE to cure or correct such matter.

7.3.2 If DOWNERS GROVE defaults under this Agreement, the COMMISSION's remedies shall be limited to an action in equity against DOWNERS GROVE to enforce or compel performance of this Agreement and actions for mandamus and specific performances DOWNERS GROVE's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but the other party to this Agreement agrees that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against DOWNERS GROVE.

ARTICLE EIGHT

MISCELLANEOUS

8.1. Term and Effect. This Implementing Agreement will become effective on the date the Agreement shall be executed by both parties (the "Effective Date"). If effective as hereinabove provided, this Agreement shall continue in full force and effect (a) for a period of forty (40) years after the Effective Date or (b) until the termination of the COMMISSION, whichever is earlier. The COMMISSION and DOWNERS GROVE agree to begin consideration of whether an extension of this Agreement is necessary not later than three (3) years prior to the end of the term of this Agreement.

8.2. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, terrorism, acts of terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the COMMISSION or DOWNERS GROVE to deliver Lake Michigan water hereunder, or of DOWNERS GROVE to receive Lake Michigan water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

8.3. Assignment. Neither the COMMISSION nor DOWNERS GROVE may assign, convey, or transfer this Agreement, or any part hereof, without prior written consent of the other party to this Agreement. This Agreement shall be binding upon, and inure to the benefit of the successors and permitted assigns of the parties hereto.

8.4. Entire Agreement. This Agreement, together with the exhibits incorporated by reference, represents the entire agreement between the COMMISSION and DOWNERS GROVE with respect to the obligations and transactions to be performed hereunder, and supersedes all prior negotiations, proposals, term sheets, representations, or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by the COMMISSION and DOWNERS GROVE. Nothing in this

Agreement shall supersede, modify, terminate, or alter in any way the terms and provisions of the Water Purchase and Sale Contract between the COMMISSION and its Charter Members, which shall remain in full force and effect.

8.5. Notices. All notices or communications provided for herein *shall be in* writing and shall be delivered to COMMISSION and DOWNERS GROVE either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed to the principal office thereof. Any action hereunder to be taken by the COMMISSION or DOWNERS GROVE may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk of the COMMISSION or DOWNERS GROVE.

8.6. No Waiver. No course of dealing or failure of the COMMISSION or DOWNERS GROVE to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

8.7. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

8.8. Limitation on COMMISSION's Financial Commitment. Notwithstanding any other provision of this Agreement, at no time during the term of this Agreement shall the COMMISSION's total financial commitment under this Agreement exceed ten million dollars (\$10,000,000).

8.9. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

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IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed by their duly authorized officers, all on the date set opposite their respective corporate names.

DUPAGE WATER COMMISSION

President

ATTEST:

Secretary

VILLAGE OF DOWNERS GROVE

Village President

ATTEST:

Village Clerk

EXHIBIT D
DUPAGE WATER COMMISSION - LINE OF CREDIT
REQUEST FOR REDUCTION NO. _____

The DuPage Water Commission approved a line of credit for the extension of Village of Downers Grove municipal water system facilities (hereinafter the "Downers Grove") in an amount not to exceed ten million, (\$10,000,000.00) dollars on or about _____ 2002,

An Intergovernmental Agreement establishing the terms of the line of credit was approved by the DuPage Water Commission and the Downers Grove Village Council on or about _____, 2002,

Downers Grove hereby requests to draw against said line of credit established by the Commission in the amount of _____ (\$ _____). Attached hereto are:

1. The Architect's or Project Engineer's certification of the total cost of completed work, as approved by _____, Village Manager;
2. The contractor's sworn statement specifying all amounts paid to or to become due to all subcontractors and material suppliers; and
3. Interim or final waivers of lien from each contractor, subcontractor, and material suppliers.

Downers Grove understands that this request will be honored upon presentation to the (Finance Director) for the Commission and will be payable within ten (10) calendar days from the date of this request, or by the next accounts' payable cycle, whichever comes first.

For The Village of DOWNERS GROVE

By: _____

Attest

By: _____

[name]

[title]

[title]

Date: _____

For The DUPAGE WATER COMMISSION

By: _____

Attest

By: _____

[name]

[title]

[title]

Date: _____